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SUBJECT: RADA COMMITTEE WELCOMES ANTI-CORRUPTION LEGISLATION

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SUMMARY

11. (U) ON JUNE 3, DRAFT BILLS ON PROFESSIONAL ETHICS AND FINANCIAL DISCLOSURE BY PUBLIC SERVANTS DEVELOPED THROUGH THE DEPARTMENT OF JUSTICE'S MILLENNIUM CHALLENGE CORPORATION (MCC) THRESHOLD COUNTRY PROGRAM (TCP) FOR UKRAINE MET WITH AN OVERWHELMINGLY POSITIVE RESPONSE IN A HEARING BEFORE THE RADA COMMITTEE ON COMBATING ORGANIZED CRIME AND CORRUPTION. THE LEGISLATION, WHICH WAS REGISTERED IN THE RADA BY A MULTI-PARTY COALITION OF RADA DEPUTIES ON MAY 14, WAS PRAISED BY MPS AND EXPERTS, INCLUDING DRAGO KOS, THE PRESIDENT OF THE GROUP OF STATES AGAINST CORRUPTION (GRECO) OF THE COUNCIL OF EUROPE, AND WILLIAM TREANOR, AN ETHICS EXPERT AND DEAN OF FORDHAM LAW SCHOOL. GRECO PRESIDENT KOS DESCRIBED THE DRAFT BILLS AS "AMONG THE MOST ADVANCED LAWS HE'[D] EVER SEEN IN HIS LIFE." EMBASSY HOPES THAT THIS HEARING WILL HELP THE LEGISLATION TO MOVE FORWARD RAPIDLY TOWARD FINAL PASSAGE. END SUMMARY.

THE NEED FOR COMPREHENSIVE LEGISLATION

12. (U) UKRAINE'S MCC TCP HAS A SINGLE OBJECTIVE OF REDUCING CORRUPTION IN THE PUBLIC SECTOR. THE \$44.9 MILLION TCP WAS APPROVED BY THE MCC IN JUNE 2006, AND PROGRAMS WERE LANCED BEGINNING IN DECEMBER 2006. THE PROGRAM IS CURRENTLY SCHEDULED TO END ON SEPTEMBER 30, 2009. THE TCP FOCUSES ON FIVE PROGRAM AREAS: STRENGTHENING CIVIL SOCIETY'S MONITORING AND EXPOSURE OF CORRUPTION, INCREASING THE TRANSPARENCY AND EFFECTIVENESS OF JUDICIAL INSTITUTIONS, INCREASED GOVERNMENT MONITORING AND ENFORCEMENT OF ETHICAL AND FINANCIAL DISCLOSURE STANDARDS, STREAMLINING AND ENFORCING GOVERNMENT REGULATIONS, AND COMBATING CORRUPTION IN HIGHER EDUCATION ADMISSIONS. THE UKRAINE TCP IS ADMINISTERED BY THE USAID REGIONAL MISSION IN UKRAINE.

13. (U) COMPONENT THREE OF THE MCC TCP FOR UKRAINE CALLS FOR THE DEPARTMENT OF JUSTICE'S OFFICE OF OVERSEAS PROSECUTORIAL DEVELOPMENT, ASSISTANCE AND TRAINING (DOJ/OPDAT) TO WORK WITH COUNTERPARTS WITHIN THE GOVERNMENT OF UKRAINE TO ASSIST IN THE DEVELOPMENT OF A COMPREHENSIVE CODE OF PROFESSIONAL ETHICS, INCLUDING PROVISIONS DEALING WITH CONFLICTS OF INTEREST, AND THE DEVELOPMENT OF A COMPREHENSIVE AND EFFECTIVE SYSTEM OF DISCLOSURE OF FINANCIAL AND OUTSIDE INTERESTS BY PUBLIC SERVANTS, WHICH CAN BE UTILIZED TO DISCOVER CONFLICTS OF INTEREST AND ILLICIT ENRICHMENT. CURRENTLY, UKRAINE HAS NO SUCH COMPREHENSIVE CODE OF PROFESSIONAL ETHICS, AND THE INDIVIDUAL CODES THAT EXIST IN INDIVIDUAL MINISTRIES AND AGENCIES TEND TO BE LARGELY ASPIRATIONAL, AND LACK CLEAR GUIDELINES FOR OFFICIALS' CONDUCT OR SANCTIONS FOR VIOLATION OF SAME. SUCH CODES, AND UKRAINIAN LAW IN GENERAL, ESSENTIALLY LEAVE UNADDRESSED CONFLICTS OF INTEREST BETWEEN THE PRIVATE INTERESTS OF PUBLIC SERVANTS AND THEIR OFFICIAL DUTIES, EVEN THOUGH SUCH CONFLICTS ARE WIDELY VIEWED TO BE ENDEMIC THROUGHOUT ALL LEVELS OF UKRAINIAN GOVERNMENT.

14. (U) SIMILARLY, WHILE THERE IS CURRENTLY SOME LEGISLATION ON FINANCIAL DISCLOSURES, IT IS WIDELY VIEWED TO BE INEFFECTIVE. THE INFORMATION REQUIRED TO BE DISCLOSED IS INSUFFICIENT, AND SUCH DISCLOSURES ARE ROUTINELY FILED IN HUMAN RESOURCES OFFICES AND NOT SUBJECT TO FURTHER REVIEW.

THE DEVELOPMENT OF THE DRAFTS NOW BEFORE THE RADA

15. (U) AS PART OF COMPONENT THREE OF THE MCC TCP, THREE DOJ/OPDAT RESIDENT LEGAL ADVISORS (RLAS) HAVE BEEN WORKING SINCE 2007 WITH A TEAM OF THREE UKRAINIAN LAWYERS ON BOTH PROFESSIONAL ETHICS AND FINANCIAL DISCLOSURES BY PUBLIC SERVANTS. WORKING GROUPS ON EACH SUBJECT WERE CREATED, COMPOSED OF REPRESENTATIVES OF VARIOUS RELEVANT PARTS OF THE UKRAINIAN GOVERNMENT, AS WELL AS LOCAL EXPERTS, NGOS AND CIVIL SOCIETY. THE RLAS ARRANGED FOR INTERNATIONAL EXPERTS TO COME TO UKRAINE TO PARTICIPATE IN ROUNDTABLE CONFERENCES AND LEGISLATIVE DRAFTING SESSIONS WITH THE WORKING GROUPS, AND LED THE WORKING GROUPS ON STUDY TOURS TO OTHER COUNTRIES IN EUROPE AND THE UNITED STATES TO LEARN HOW SUCH SYSTEMS FUNCTION ELSEWHERE. AT TIMES, THE WORKING GROUPS WERE COMBINED TO ADDRESS COMMON ISSUES. OUTREACH SESSIONS WERE ALSO CONDUCTED THROUGHOUT UKRAINE, AT WHICH ADDITIONAL INPUT WAS GAINED FROM LOCAL PUBLIC SERVANTS, ACADEMICS, NGOS AND THE MEDIA.

16. (SBU) AS A RESULT OF THESE EFFORTS, DRAFT LEGISLATION WAS PREPARED ON BOTH PROFESSIONAL ETHICS AND THE DISCLOSURE OF FINANCIAL AND OUTSIDE INTERESTS BY PUBLIC SERVANTS. IN THE CASE OF THE LATTER, THERE WERE ADDITIONAL DETAILED DISCUSSIONS WITH REPRESENTATIVES OF THE STATE TAX ADMINISTRATION, THE MINISTRY OF FINANCE AND THE MINISTRY OF JUSTICE IN ORDER TO REVISE THE LEGISLATION TO INCORPORATE THE IDEA THAT, PARTICULARLY UNDER CURRENT FINANCIAL CIRCUMSTANCES, THE STATE TAX ADMINISTRATION WOULD HANDLE THE INITIAL RECEIPT AND PROCESSING OF THE FINANCIAL DISCLOSURE FORMS (WHICH IT ALSO APPARENTLY VIEWS AS AN INITIAL STEP TOWARD ITS DESIRED GOAL OF UNIFORM TAX DECLARATIONS BY ALL UKRAINIANS).

17. (SBU) WHEN IT BECAME CLEAR THAT IT WOULD BE IMPOSSIBLE TO PROCEED THROUGH THE CABINET OF MINISTERS PROCESS TO INTRODUCE THE DRAFT LEGISLATION DURING THE LIFE OF THE MCC TCP, THE RLAS COORDINATED WITH THE RADA, IN WHICH A COALITION OF MPS WAS FORMED THAT REPRESENTED VARIOUS FACTIONS SO AS TO TRY TO AVOID PARTISANSHIP. THIS COALITION REGISTERED BOTH DRAFTS ON MAY 14, AND THEY WERE ASSIGNED TO THE COMMITTEE ON COMBATING ORGANIZED CRIME AND CORRUPTION, FOR WHOM THE RLAS HAVE SERVED AS ADVISORS ON ANTI-CORRUPTION LEGISLATION FOR SOME TIME.

THE JUNE 3 HEARING

18. (U) ON JUNE 3, THE DOJ/OPDAT MCC PROGRAM SPONSORED A HEARING ON THE DRAFT LEGISLATION WITH THE RADA COMMITTEE ON COMBATING ORGANIZED CRIME AND CORRUPTION. AT THE INVITATION OF THE DOJ/OPDAT MCC PROGRAM, THE HEARING WAS CO-SPONSORED BY THE COUNCIL OF EUROPE'S LOCAL ANTI-CORRUPTION PROJECT (UPAC) AND THE INDIANA UNIVERSITY PARLIAMENTARY DEVELOPMENT PROJECT (IUPDP II). JOINED WITH THE TWO BILLS DEVELOPED THROUGH THE MCC PROGRAM WAS A THIRD DRAFT, PREPARED IN COORDINATION WITH THE STATE CIVIL SERVICE, THAT COMBINED SOME OF THE CONFLICTS OF INTEREST PROVISIONS DEVELOPED THROUGH OUR WORKING GROUP WITH LIMITED FINANCIAL DECLARATIONS PROVISIONS. THE HEARING WAS VERY SUCCESSFUL, WITH THE DRAFT LEGISLATION DEVELOPED THROUGH THE DOJ/OPDAT MCC PROGRAM RECEIVING A VERY POSITIVE RECEPTION.

19. (U) INTRODUCTORY REMARKS AT THE HEARING WERE MADE BY COMMITTEE CHAIR MP IHOR KALETNIK, AMBASSADOR AKE PETERSON, THE REPRESENTATIVE TO UKRAINE OF THE SECRETARY GENERAL OF THE COUNCIL OF EUROPE (COE), AND THE USAID MISSION DIRECTOR FOR UKRAINE AND MOLDOVA. MP KALETNIK SAID THAT THE ANTI-CORRUPTION EFFORT, OF WHICH THESE BILLS WERE A PART, INVOLVED NOT JUST PROSECUTING CRIMES, BUT ALSO DETERRING MISCONDUCT AND ESTABLISHING TRANSPARENCY AND PUBLIC CONFIDENCE IN GOVERNMENT. HE SAID THAT THE RADA NEEDED TO ADOPT THESE LAWS, NOT JUST TO IDENTIFY ILLICIT ENRICHMENT, BUT ALSO FINANCIAL CONFLICTS OF INTEREST, WHICH HE DESCRIBED AS A NEW BUT IMPORTANT CONCEPT IN UKRAINE. THE REPRESENTATIVE OF THE COE SAID THAT IT SUPPORTS THE DRAFTS AND USAID MISSION DIRECTOR DESCRIBED THEM AS "CRUCIAL" LEGISLATION FOR UKRAINE.

110. (U) THE NEXT ADDRESSES WERE GIVEN BY THE MPS WHO INTRODUCED THE CIVIL SERVICE DRAFT AND THE MCC-DEVELOPED LEGISLATION. MP MIROSHNICHENKO, WHO HAD INTRODUCED THE DRAFT PREPARED BY THE UKRAINIAN CIVIL SERVICE, NOTED THAT UKRAINE NOW HAD A BODY OF PEOPLE WHO UNDERSTAND THESE ISSUES, SPECIFICALLY CITING A STUDY TOUR TO THE UNITED STATES, WHICH HAD BEEN SPONSORED BY THE DOJ/OPDAT PROGRAM AND IN WHICH HE HAD PARTICIPATED. HE ADVOCATED COMBINING THE DRAFTS AND

COOPERATING ON SAME. MP VLASENKO THEN SPOKE BRIEFLY ABOUT THE TWO DRAFTS DEVELOPED THROUGH THE DOJ/OPDAT MCC PROGRAM, AND AGREED THAT THE DRAFT INTRODUCED BY MP MIROSHNICHENKO SHOULD BE COMBINED WITH THEM (THOUGH HE OPINED, AND OTHERS AGREED, THAT THE PROFESSIONAL ETHICS AND FINANCIAL DISCLOSURE PROVISIONS SHOULD REMAIN IN SEPARATE LAWS). VLASENKO NOTED THAT UKRAINE HAD DROPPED FROM 117 TO 134 OUT OF 180 COUNTRIES IN THE RECENT CORRUPTION PERCEPTIONS INDEX (WHERE IT IS TIED WITH PAKISTAN AND NICARAGUA), AND THAT THESE LAWS WERE NEEDED TO COMBAT BOTH CONFLICTS OF INTEREST AND ILLICIT ENRICHMENT.

¶11. (U) THE FLOOR WAS THEN TURNED OVER TO THE EXPERTS INVITED BY THE DOJ/OPDAT PROGRAM TO DISCUSS THE DRAFTS PREPARED UNDER COMPONENT THREE OF THE TCP. GRECO PRESIDENT KOS, WHOSE VIEWS ARE PARTICULARLY INFLUENTIAL IN UKRAINE AS IT TRIES TO DEMONSTRATE ITS WILLINGNESS TO MEET EURO-ATLANTIC STANDARDS, TESTIFIED THAT THE BILLS WERE "AMONG THE MOST ADVANCED LAWS HE'S EVER SEEN IN HIS LIFE." IN ADDITION TO FINDING THAT THEY COMPLY WITH ALL RELEVANT CONVENTIONS AND INSTRUMENTS, HE SAID THAT SOME OF THEIR PROVISIONS ARE IN LINE WITH THE MOST ADVANCED LEGAL ACTS IN THE WORLD, AND WOULD BE NEW, NOT JUST FOR UKRAINE, BUT FOR SOME OLDER EU STATES. HE EXPLAINED THAT UKRAINE "NEEDS PRINCIPLES SO THAT PUBLIC OFFICIALS KNOW HOW TO BEHAVE," AND OPINED THAT, IF THE DRAFTS ARE ADOPTED, HE IS "SURE THEY [GRECO] WILL CONSIDER LOTS OF THE GRECO RECOMMENDATIONS ADOPTED." KOS SAID THAT THE DRAFTS DEVELOPED THROUGH THE DOJ MCC PROGRAM ARE "EXCELLENT STARTING POINTS FOR THE FUTURE." HE EXPRESSED HOPE FOR THE ANTI-CORRUPTION PACKAGE, WHICH THEREAFTER PASSED ON SECOND READING ON JUNE 11 AND IS VIEWED BY THE MINISTRY OF JUSTICE (MOJ) AND OTHERS AS AN INTIAL STEP OR FOUNDATION FOR THE DEVELOPMENT OF FURTHER ANTI-CORRUPTION LEGISLATION, PROMINENTLY INCLUDING THE TWO BILLS ON PROFESSIONAL ETHICS AND FINANCIAL DISCLOSURE BY PUBLIC SERVANTS.

¶12. (U) DEAN TREANOR, FORMERLY DEPUTY ASSISTANT ATTORNEY GENERAL AT THE OFFICE OF LEGAL COUNSEL OF THE DEPARTMENT OF JUSTICE, NEXT TESTIFIED THAT THE DRAFTS DEVELOPED THROUGH THE DOJ/OPDAT MCC PROGRAM ARE "ESSENTIAL LEGISLATION" FOR UKRAINE. HE OPINED THAT THEY DO AN "EXTRAORDINARY JOB" OF MEETING THE CORE PRINCIPLES NECESSARY TO REDUCE SYSTEMIC CORRUPTION TO EPISODIC CORRUPTION IN UKRAINE, WHICH HE IDENTIFIED AS: (1) FINANCIAL DISCLOSURE, (2) A COMPREHENSIVE CODE OF ETHICS, (3) AN EFFECTIVE ENTITY OR INDIVIDUALS TO LOOK FOR CONFLICTS OF INTEREST, AND (4) SANCTIONS.

¶13. (SBU) FOLLOWING THE EXPERTS, SEVERAL REPRESENTATIVES OF DIFFERENT PARTS OF THE UKRAINIAN GOVERNMENT SPOKE, ALL GENERALLY IN FAVOR OF THE DRAFT LEGISLATION. TYMOFIY MOTRENKO, THE HEAD OF THE MAIN DEPARTMENT OF THE UKRAINIAN CIVIL SERVICE, EXPRESSED HIS VIEW THAT CRIMINAL LIABILITY FOR VIOLATIONS OF THESE DRAFTS WAS "TOO RIGOROUS FOR UKRAINE," AS "PEOPLE MAKE ERRORS." (COMMENT: THE PROPOSED CRIMINAL SANCTIONS WOULD ONLY APPLY FOR THE MOST EGREGIOUS INTENTIONAL VIOLATIONS, NOT FOR ERRORS, AND MOST VIOLATIONS WOULD CERTAINLY BE SANCTIONED THROUGH DISCIPLINARY MEANS. END COMMENT.) COMMITTEE VICE-CHAIR MP RIABECKA SPOKE ABOUT THE NEED TO PASS THE ANTI-CORRUPTION PACKAGE, AND SAID THAT THE DRAFTS CONSIDERED AT THE HEARING WOULD BE "FURTHER PROGRESS" AFTER THE PACKAGE PASSES. RIABECKA DID NOTE THAT THE DRAFTS WERE IN COMPLIANCE WITH THE COUNCIL OF EUROPE'S GUIDING PRINCIPLES, AS WELL AS THOSE OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION, AND RECOMMENDED THAT THE DRAFTS BE SUBJECT TO REVIEW AND ANALYSIS BY THE RADA BEFORE BEING FINALIZED, TAKING INTO ACCOUNT THE RECOMMENDATIONS OF THE HEARING, THE DOJ/OPDAT MCC PROGRAM, UPAC AND THE ANTI-CORRUPTION NETWORK OF THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, OF WHICH UKRAINE ALSO IS A MEMBER.

¶14. (U) SINCE THE HEARING, THE DOJ/OPDAT MCC PROGRAM HAS PREPARED EXPERT ANALYSES COMPARING THE DRAFTS PREPARED THROUGH THE DOJ/OPDAT MCC PROGRAM AND THE DRAFT ADVANCED BY THE UKRAINIAN CIVIL SERVICE AND HAVE PROVIDED THESE COMMENTS TO THE COMMITTEE STAFF. DOJ/OPDAT MCC PROJECT STAFF HAVE BEEN TOLD THAT, WHEN THE COMMITTEE HAS A QUORUM, IT IS HOPED THAT THE COMMITTEE WILL VOTE ON THE PROFESSIONAL ETHICS AND FINANCIAL DISCLOSURE DRAFTS IN THE NEAREST FUTURE. ADDITIONALLY, DOJ/OPDAT MCC PROJECT STAFF WERE INFORMED ON JUNE 10 THAT THE COMMITTEE INTENDED TO SEND A LETTER TO THE CABINET OF MINISTERS ASKING FOR ITS SUPPORT FOR BOTH OF THE DRAFTS DEVELOPED THROUGH THE DOJ MCC PROGRAM. IN A SUBSEQUENT MEETING ON JUNE 11, THE GOVERNMENT ANTI-CORRUPTION AGENT WITHIN THE OFFICE OF THE PRIME MINISTER ALSO EXPRESSED HIS INTENT TO SUPPORT THE DRAFTS.

COMMENT

¶15. (U) THE REGISTRATION AND POSITIVE RECEPTION RECEIVED IN THE RADA BY THE DRAFTS ON PROFESSIONAL ETHICS AND FINANCIAL DISCLOSURE FOR PUBLIC SERVANTS IS A SIGNIFICANT STEP FORWARD IN ACHIEVING THE AIMS OF ASSISTING UKRAINE TO DEVELOP COMPREHENSIVE AND EFFECTIVE LEGISLATION IN THESE AREAS CONSISTENT WITH EURO-ATLANTIC STANDARDS. EMBASSY WILL CONTINUE TO ENGAGE WITH PARTNERS IN THE RADA AND ELSEWHERE IN THE GOVERNMENT TO SUSTAIN THIS PROGRESS IN THE HOPE OF SEEING THE DRAFTS MOVE FORWARD TOWARD FINAL PASSAGE AS SOON AS POSSIBLE.